

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matters of)	
)	
IP-Enabled Services)	WC Docket No. 04-36
)	
E911 Requirements for IP-Enabled Service Providers)	WC Docket No. 05-196
)	

REPLY COMMENTS OF UNITED ONLINE, INC.

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SUMMARY

United Online, Inc. (“United Online”), through its undersigned counsel, respectfully provides these reply comments to the Commission’s Further Notice of Proposed Rulemaking (“Notice”) in the above-captioned proceedings.

United Online recommends that the Commission resist expanding the scope of the *Order* to services that consumers cannot reasonably expect to be 9-1-1-capable. Consumers of United Online’s computer-launched software application, for example, do not reasonably expect such capability, and the Commission should therefore not impose burdensome and costly requirements where there is little to no public benefit to be gained, nor should the Commission adopt a policy that may lead some consumers to rely unreasonably on a service that should not be used in emergency situations.

Further, United Online urges the Commission to adopt national VoIP E9-1-1 standards, and allow for states and localities to implement such standards. Inconsistent state requirements will only serve to delay ubiquitous implementation of a nationwide VoIP E9-1-1 system. It joins those commenters that discourage the Commission from adopting additional reporting requirements for VoIP providers, as the necessity and utility of reports are dubious at best.

It is unnecessary for the Commission to adopt timeframes for when location information should be updated, as this function is generally outside the control of VoIP providers—third parties often control access to the databases where such updates are managed. Additionally, the Commission should require ILECs to allow VoIP providers and third party vendors to access E9-1-1 infrastructure necessary for the implementation of VoIP E9-1-1 services. Doing so will prevent frustration of the Commission’s policy goals in the adoption of VoIP E9-1-1 services.

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I. INTRODUCTION

United Online, Inc. (“United Online”), through its undersigned counsel, respectfully provides these reply comments on the Commission’s Further Notice of Proposed Rulemaking (“Notice”) in the above-captioned proceedings.

United Online recommends that the Commission resist expanding the scope of the Voice over Internet Protocol (“VoIP”) E9-1-1 Order¹ (“*Order*”) to include two-way VoIP services, interconnected with the public switched telephone network (“PSTN”), that require the use of a general purpose computer and a launched software application, but do not require the use of a broadband Internet access connection. The Commission should adopt national VoIP E9-1-1 standards and allow for states and localities to implement such standards. It joins those parties that discourage the Commission from adopting additional reporting requirements for VoIP providers. The Commission also should not adopt timeframes for when location information should be updated as this is completely outside the control of VoIP providers, and should reject

¹ *IP-Enabled Services, E911 Requirements for IP-Enabled Service Providers*, WC Docket Nos. 04-36 & 05-196, First Report and Order and Notice of Proposed Rulemaking (rel. June 3, 2005).

arguments that selective router redundancy is necessary for VoIP services. Further, the Commission should require that incumbent local exchange carriers (“ILECs”) allow access to E9-1-1 infrastructure, to prevent frustration of its policy goals.

II. THE COMMISSION SHOULD NOT EXPAND THE SCOPE OF THE *FIRST REPORT AND ORDER* UNTIL THE INDUSTRY COMPLETES IMPLEMENTATION OF A VOIP E9-1-1 SOLUTION

The Commission’s *Order* adopts an aggressive timeframe for interconnected VoIP service providers to deploy a nationwide E9-1-1 solution. United Online will work closely with third parties to ensure that any interconnected VoIP service that the Company offers is capable of providing E9-1-1 functionality. While the VoIP industry is working towards meeting the Commission’s deadline for deploying an E9-1-1 solution by November 28, 2005, creating such a system is a complex task that requires coordination among a number of different market participants. VoIP providers are wholly reliant on numerous third parties to develop and implement an E9-1-1 solution, including more than 6,000 PSAPs that must agree to accept 9-1-1 calls from VoIP providers, and RBOCs that control access to selective routers. Additionally, many implementation issues have arisen during the VoIP E9-1-1 deployment process including access to the Master Street Address Guide (“MSAG”) databases and the assignment of pseudo-ANI (“pANI”).

Given the enormity of the task to establish a nationwide VoIP E9-1-1 solution by the Commission’s deadline, coupled with the fact that numerous parties outside of the VoIP industry control critical E9-1-1 infrastructure and necessary E9-1-1 elements, United Online agrees with other parties that now is not the time to expand the scope of the *Order*.² Rather, the VoIP indus-

² *IP-Enabled Services, E911 Requirements for IP-Enabled Service Providers*, Comments of AT&T Corp., WC Docket Nos. 04-36 & 05-196, at 8-10 (filed Aug. 15, 2005). The initial comments filed in this proceeding are cited herein by the name of the filing party only. *See also* Joint Comments of Center for Democracy & Technology, et al., at 11-12; Comments of Glow- (Cont’d)

try, RBOCs, PSAPs and the Commission must devote all their resources to ensuring that interconnected VoIP services are able to offer E9-1-1 capabilities by the November 28, 2005 deadline. Just as the Commission had to revise its approach concerning the distribution of notices and receipt from VoIP customers of affirmative acknowledgements, it is very likely that the Commission will have to clarify a number of issues as the November 28, 2005 deadline approaches.³ Once a robust VoIP E9-1-1 solution is in place, the industry and the Commission should consider whether it is appropriate to expand emergency services to other VoIP technologies.

III. E9-1-1 OBLIGATIONS SHOULD ONLY BE IMPOSED ON SERVICES WHERE CUSTOMERS HAVE A “REASONABLE EXPECTATION” THAT SUCH FUNCTIONALITY IS AVAILABLE

The Commission must not treat all VoIP services equally when determining the scope of E9-1-1 obligations. United Online initially intends to offer three types of VoIP services, of which only one will allow for the exchange of real-time, two-way, voice traffic interconnected with the public switched telephone network. United Online agrees with those parties advocating that E9-1-1 obligations should apply only to those services where a customer has a “reasonable

Point, Inc., at 1; Comments of Information Technology Industry Council, at 3-4; Comments of SBC Communications Inc., at 3-4; Comments of Skype Communications, SA, at 5; Comments of Time Warner, Inc., at 7; Comments of United Online, Inc., at 4-6; Comments of United States Telecom Association, at 2; Verizon Comments, at 2-3; Comments of Voice on the Net Coalition, at 5-8.

³ See *IP-Enabled Services, E911 Requirements for IP-Enabled Service Providers*, WC Docket Nos. 04-36 & 05-196, Petition for Reconsideration/Clarification and/or Waiver by CompTel (filed July 29, 2005), Joint Petition for Clarification of the National Emergency Number Association and the Voice on the Net (VON) Coalition (filed July 29, 2005), Petition of T-Mobile USA, Inc. for Clarification (filed July 29, 2005).

expectation” that the service is E9-1-1 capable and where it is technically and operationally feasible for the service or device to support E9-1-1.⁴

In evaluating whether customers have a “reasonable expectation” that a service is E9-1-1 capable, much depends on whether the device utilized to access the service resembles a traditional telephone and whether the service functions like a traditional telephone. For instance, while there are many forms of real-time, two-way communications, the *Order* is limited to “voice” services. This distinction recognizes that people who use other forms of real-time, two-way communications – like Instant Messaging and text messaging – do not (and cannot reasonably) expect that these services have E9-1-1 capabilities. Likewise, a one-way voice service does not carry the same expectation of E9-1-1 accessibility, regardless of whether the device utilized to make use of the service looks like a traditional telephone.⁵

As explained in United Online’s initial comments,⁶ a NetZero VoIP customer must access the service through a general purpose computer, such as a laptop or a desktop PC, and a launched software application. In order to use the service, NetZero VoIP consumers must turn their computer on, wait for the computer to complete the startup process, log onto to the Internet (in some cases requiring the provision of a user identification and password), launch the VoIP application, strap on a headset, position the microphone, dial through the software application, and connect. The VoIP service is not immediately available for use like a traditional telephone service or some of the other broadband VoIP services that make use of terminal adapters. None

⁴ See *Order*, ¶ 19, n.58; ¶ 24, n.78. See also Comments of AT&T Corp., at 8-10; BellSouth Comments, at 7; Comments of GlowPoint, Inc., at 1; Comments of Qwest Communications Corporation, at 3-4; Comments of Skype Communications, SA, at 5.

⁵ See generally Comments of Skype Communications, SA, at 5.

⁶ Comments of United Online, Inc., at 2.

of United Online's initial products, as planned, will use a terminal adapter, nor will they provide for the attachment of traditional telephone equipment.⁷ As currently conceived, NetZero's initial VoIP services will be a natural extension of the existing online consumer communications it offers such as email and instant messaging. For all of these communications capabilities the consumer must actively use the PC to access the various communication interfaces. In other words, NetZero's VoIP services will be supplemental to, rather than a replacement for, traditional telephone services.

United Online disagrees with those parties that advocate extending the requirements of the *Order* to all real-time, two-way voice services.⁸ For example, users that access NetZero's Internet VoIP application using a dialup account will continue to have access to 9-1-1 and, if available, E9-1-1 through their traditional telephone, indicating the VoIP service cannot reasonably be considered a substitute for wireline local exchange, but rather a supplement. In this case, NetZero's VoIP service, when used by a dialup customer, will be vastly different from the services that were the subject of the *Order*. Where customers subscribe to a VoIP service, including two-way services, marketed for use as a secondary line or as a complement to other online services, there is no reasonable expectation that the service will include emergency dialing similar to the traditional 9-1-1 and E9-1-1 associated with wireline telephony. For example, on wireline and wireless phones, E9-1-1 services are never more than 3 or 4 keystrokes away, but

⁷ It is possible that sophisticated computer users could configure their computer in a manner that would allow for the use of devices that are similar to traditional telephony equipment such as a handset device. However, such equipment still would have to be attached to a computer. Further, users will have to have their PCs powered on and the relevant VoIP application launched. Users with this level of computer sophistication are likely to also know and understand the E9-1-1 limitations associated with the VoIP service they are using.

⁸ See, e.g., Comments of Boulder Regional Emergency Telephone Service Authority, at 2.

NetZero's VoIP service requires many more steps to initiate a call. There is no dial tone associated with the NetZero VoIP service and the devices attached to the computer to place calls do not resemble traditional telephone equipment. For all of these reasons, United Online will not be marketing the service as a home line replacement and it would be cumbersome for consumers to use the product as a primary line replacement.

The attraction of NetZero's VoIP services for its customers is that it offers dialup customers a *second line service*. In other words, instead of subscribing to a second line from the local telephone company, NetZero dialup subscribers can continue to make telephone calls while surfing the Internet using NetZero's VoIP service. In an emergency, however, these customers need only pick up their ordinary telephone handset and dial 9-1-1 to access the "traditional" 9-1-1 or E9-1-1 emergency services available in their area.

For those customers that access NetZero's VoIP application through a broadband Internet access connection, users will still be required to use a general purpose computer, not a terminal adapter, and a software application in order to make use of the VoIP service. The lack of immediate access to emergency personnel is self-evident to consumers due to the multiple steps required to use the service. Further, the limitations of the VoIP service – such as its unavailability if there is an electrical outage or if there is network congestion – are also readily apparent since the service *requires* the use of a general purpose computer and a software application.⁹ Finally, the VoIP Internet application, as offered by NetZero, does not allow for the connection of traditional telephone devices without the consumer separately seeking and configuring hardware from a third party manufacturer that will ultimately have to be connected to the computer.

⁹ United Online will, of course, provide its customers with ample warnings concerning the unavailability of 9-1-1 and E9-1-1 services.

Regardless of whether the NetZero VoIP user utilizes a dialup or broadband Internet connection, customers are not likely to react to an emergency by turning on their computer, logging in to their ISP and then making a VoIP call to 9-1-1, in the case of a dialup account, or running to their computer and using the touchtone keypad generated by the software application and displayed on the computer screen to dial 9-1-1, even if they are already logged on to both their ISP account and the VoIP application. While NetZero aims to make accessing the Internet as easy as possible for its customers, the reality is this process still takes much longer than placing an ordinary call to a 9-1-1 dispatcher. Visitors to a NetZero VoIP consumer's residence would not reasonably rely on the NetZero VoIP service to place a 9-1-1 call. For example, a friend visiting the house of a NetZero VoIP consumer that encounters an emergency will not rush to the computer to make a 9-1-1 call—even assuming the computer is on and connected to the appropriate service at the time of the emergency, a highly unlikely scenario. In many cases, no one other than the primary account holder will even have the credentials necessary to connect to the services, and therefore third parties would be unable even to attempt a 9-1-1 call via the NetZero VoIP service. Instead, they will look for a traditional telephone to make the call.

Under these conditions, “[r]easonable consumers will not rely on the United Online PC-dependent and software-based service to provide E9-1-1 functionality.”¹⁰ As a result the Commission should not conclude that these VoIP services need be subject to the E9-1-1 rules. Imposing E9-1-1 or 9-1-1 service mandates on these services would serve no useful purpose and would only serve as a barrier to further innovation in consumer services. In fact, extending VoIP E9-1-1

¹⁰ *Ex Parte* Letter from Catherine Wang and Ronald W. Del Sesto, Jr., Counsel for United Online, Inc. to Marlene H. Dortch, Secretary of the Federal Communications Commission, WC Docket No. 04-36, at 3 (filed May 12, 2005).

obligations to this type of service would create unreasonable consumer expectations that do not currently exist. Such a mandate could have the perverse result of encouraging consumers to drop their traditional telephone line as a result of the Commission's VoIP E9-1-1 order, exposing consumers to substantial risk. A VoIP service that requires a general purpose PC coupled with a launched software application in order to use will not provide a level of E9-1-1 service that is suitable for consumers to rely on because of the time and complexity of the task required to place a call.

IV. NATIONAL VOIP E9-1-1 STANDARDS SHOULD BE ADOPTED; STATES AND LOCALITIES SHOULD IMPLEMENT COMMISSION-MANDATED TECHNICAL SOLUTIONS

The Commission is seeking comment on the role states should play in implementing the E9-1-1 rules adopted by the Commission.¹¹ Clearly, the existing E9-1-1 community must be, and already is, involved in VoIP E9-1-1 implementation. Further, states and localities have a substantial interest in the delivery of emergency services since their local resources are dispatched when emergencies occur. However, given the ambitious timeframe for rolling out a VoIP E9-1-1 solution and the unique challenges that VoIP technology raises in the delivery of emergency services, United Online joins those parties that believe it is critical to establish national standards and uniform rules for VoIP E9-1-1 services.¹² Otherwise, deploying a nationwide VoIP E9-1-1

¹¹ See Notice, ¶ 61.

¹² See BellSouth Comments, at 9 (arguing that Commission must assume the primary responsibility for seeing that its regulations are implemented); Initial Comments of Intrado, Inc., at 4-5 (discouraging any E9-1-1 network connection requirements or rules imposed by states or localities); Comments of New York State Department of Public Service, at 1-2 (stating states should oversee local implementation of Commission-mandated technical solutions); Comments of SBC Communications Inc., at 15 (emphasizing that any state involvement must be consistent with national policies); Comments of United States Telecom Association, at 9 (advocating that any state role must fit within a federal framework).

solution will take substantially longer due to the complexities associated with developing a solution that must meet differing state and local requirements. States and localities should be responsible for implementing national technical standards adopted by the Commission.

The Commission should take a proactive role in establishing national E9-1-1 standards for VoIP services. For example, Intrado notes that imposing wireless trunking standards on VoIP providers is inappropriate given the nature of VoIP E9-1-1 call processing.¹³ The ambiguity that currently exists as to what standard VoIP providers have to meet threatens to delay the implementation of VoIP E9-1-1 solutions in certain areas. Additionally, in some areas of the country, there is no entity acting as a pANI administrator. Without access to pANI, nomadic VoIP services cannot route calls to the appropriate selective router using the wireline E9-1-1 network. Trunking standards and the lack of a pANI administrator in some areas of the country are only a few of the issues that are currently slowing the deployment of a nationwide E9-1-1 solution. If the VoIP industry is to have a chance to meet the November 28, 2005 deadline, it is critical for the Commission to clarify what standards VoIP providers must meet in deploying E9-1-1 solutions and to address gaps in the E9-1-1 system such as the lack of a pANI administrator in certain areas.

States and localities must also be involved in implementing the Commission's VoIP E9-1-1 rules. Incumbent local exchange carriers ("ILECs") control much of the E9-1-1 infrastructure in most states but the *Order* imposes no obligations on ILECs to allow VoIP providers to access the E9-1-1 network. States can assist VoIP providers in obtaining the necessary access

¹³ See Initial Comments of Intrado, Inc., at 4.

to selective routers and other E9-1-1 infrastructure.¹⁴ Accordingly, the Commission and states both have important roles to play, but the Commission must establish a national framework for states and localities to implement.

V. THE COMMISSION SHOULD NOT IMPOSE ADDITIONAL REPORTING REQUIREMENTS ON VOIP PROVIDERS

The Commission is seeking comment on whether to require VoIP providers to report on their progress in developing automatic location identification capabilities or, alternatively, if there are other ways for the Commission to monitor progress in implementing VoIP E9-1-1 solutions.¹⁵ United Online agrees with parties recommending that the Commission should not adopt additional reporting requirements for VoIP providers.¹⁶ Existing providers of interconnected VoIP services will have filed three reports in less than a month.¹⁷ All “interconnected VoIP service providers” are required to file compliance reports by November 28, 2005.¹⁸ The apparent purpose of the Commission’s proposed reporting requirements would be to monitor VoIP E9-1-1 implementation,¹⁹ yet the report that VoIP providers must file on November 28, 2005 will inform the Commission as to whether or not VoIP providers have implemented an

¹⁴ See, e.g., Comments of New York State Department of Public Service, at 1-2 (emphasizing that states should oversee the local implementation of Commission-mandated standards).

¹⁵ See *Order*, ¶ 60.

¹⁶ See, e.g., Comments of SBC Communications Inc., at 11-12; Comments of Time Warner, Inc., at 12; Comments of United States Telecom Association, at 8.

¹⁷ See Press Release, Federal Communications Commission, Enforcement Bureau Provides Further Guidance to Interconnected Voice Over Internet Protocol Service Providers Concerning Enforcement of Subscriber Acknowledgement Requirement, DA 05-2358, (rel. Aug. 26, 2005); see also Press Release, Federal Communications Commission, Enforcement Bureau Provides Guidance to Interconnected Voice Over Internet Protocol Service Providers Concerning the July 29, 2005 Subscriber Notification Deadlines, DA 05-2085 (rel. July 26, 2005).

¹⁸ See 47 C.F.R. § 9.5(f).

¹⁹ See *id.*

E9-1-1 VoIP solution in accordance with the *Order*. Accordingly, additional reporting requirements would be repetitive and divert the VoIP industry from the more pressing task of developing an E9-1-1 solution.²⁰

Instead of adopting industry-wide reporting requirements concerning the development of automatic location technologies for VoIP services, the Commission should look to other more effective means to monitor industry progress in implementing VoIP E9-1-1. For example, there are many different industry groups actively working on VoIP E9-1-1 implementation issues. The Alliance for Telecommunications Industry Standards (“ATIS”) has numerous committees, some of which have been directly involved in VoIP E9-1-1 implementation issues. Specifically, ATIS’ Emergency Services Interconnection Forum studied issues relating to the use of pANI by VoIP service providers. Also, the North American Numbering Council (“NANC”) established a pANI Issue Management Group to analyze and make recommendations to the Commission concerning the creation of an Interim 9-1-1 Routing Numbering Authority. The provision of automatic location information by VoIP providers is a highly complex and technical issue. Accordingly, it would be much more effective for the Commission to look to the NANC and ATIS for assistance in developing standards and assessing industry progress in creating automatic location solutions for VoIP services rather than requiring VoIP service providers to file periodic, and most probably duplicative, reports.²¹

It is clear that if the Commission adopted the additional reporting requirements advocated by some parties, VoIP providers would quickly become lost in a torrent of forms and reporting

²⁰ See, e.g., Comments of SBC Communications Inc., at 11-12.

²¹ See, e.g., Comments of SBC Communications Inc., at 6-9, 11-12.

requirements. Some parties believe that the Commission should mandate that VoIP providers submit line and customer counts by jurisdiction.²² Others attempt to use reporting requirements as means to mandate that VoIP providers centrally register and qualify for the alleged purpose of ensuring that “only authorized providers” access the 9-1-1 system.²³ Still others believe it is necessary to impose reporting requirements that would obligate VoIP providers to provide information, on a state-by-state basis, concerning: (i) what portion of the state they are serving; (ii) the type of E9-1-1 solution implemented; and (iii) the service area and use restrictions imposed on VoIP customers.²⁴ This representative sample of proposed reporting requirements illustrates that VoIP providers could become quickly deluged in a sea of bureaucratic red tape, while the utility of the information provided would be highly questionable.

²² See, e.g., Comments of Boulder Regional Emergency Telephone Service Authority, at 8. The purpose of this report would be for fee collection. Without expressing an opinion as to how 9-1-1 fees should be collected from VoIP providers, United Online questions why a federal reporting requirement would be necessary. If VoIP providers are ultimately required to calculate 9-1-1 fees on state or local basis, the VoIP provider would submit a form detailing its customer and line count along with the appropriate fee.

²³ See, e.g., Letter from William Charon, Vice Chairman, Michigan ETSC, to Marlene H. Dortch, Secretary of the Federal Communications Commission, WC Docket No. 04-36, at 1 (filed July 22, 2005). The national register and qualification “reporting” requirement is ambiguous for a number of reasons. The 9-1-1 system is not a centrally located database or network, rather it is comprised of many different pieces and parts. In order to route calls using the dedicated 9-1-1 network, VoIP providers or third parties must obtain access to the selective routers. This requires entering into agreements with RBOCs and other parties that control the selective routers. In order to route 9-1-1 calls to PSAPs, agreements must be entered into with the relevant PSAPs. Other elements of the 9-1-1 network, like MSAG databases and pANI, also must be accessed or obtained through agreements or an application process. It is unclear how an entity that enters into the requisite agreements and files the necessary applications would still be “unauthorized.” It is also unclear as to why VoIP providers alone would have to register and qualify.

²⁴ See, e.g., Comments of Texas 9-1-1 Alliance, at 13-14. Much of the information proposed for inclusion in this report is readily available today on VoIP providers’ websites. Further, the *Order* calls for a particular type of VoIP E9-1-1 solution yet the proposed report would require VoIP providers to report what type of E9-1-1 solutions it has implemented.

VI. COMMENTS DO NOT DEMONSTRATE THE NEED FOR A PERFORMANCE STANDARD GOVERNING UPDATING LOCATION INFORMATION

In its initial comments, United Online urged the Commission to forego imposing a performance standard that would compel providers to update registered location within a specific timeframe. While several parties urge the Commission to adopt some standard, these parties utterly fail to address the technical and practical impediments United Online and others identified in initial comments.

Most comments in this proceeding support the approach offered by United Online in its initial comments: afford providers a reasonable period of time to process the data, transmit the data to external vendors, and, at some point in the future, appropriately verify the location information against the MSAG.²⁵ In particular, commenters observe that mandating standard intervals would reduce the incentive of market participants to use faster response time (and even true automatic location identification) as a manner of differentiating service in a robustly competitive marketplace.

The parties that urge the Commission to adopt specific registered location standards blithely ignore the impediments that typically arise in address validation. For instance, the Texas Commission on State Emergency Communications (“Texas CSEC”) contends that a “customer should have access to emergency services immediately upon the service becoming functional and within 24 hours of the providing an update.”²⁶ In the same breath, however, the Texas CSEC acknowledges that registered locations must be validated against the MSAG and that providers should only send “appropriate, readable, MSAG valid... location information to the PSAP.”²⁷ It

²⁵ Comments of United Online, Inc., at 12-14.

²⁶ Comments of Texas Commission on State Emergency Communications, at 7.

²⁷ *Id.* at 8.

is, of course, impossible to comply with both of these proposals when MSAG validation frequently requires manual intervention to resolve conflicts between the address provided by the subscriber and the address in the MSAG.²⁸

Similarly, the Boulder Regional Emergency Telephone Service Authority proposal that this information be completed within 24 hours, 95% of the time, upon service activation and within 5 minutes, 95% of the time, for updated information, is inconsistent with the reality of the manual nature of MSAG validation.²⁹ Boulder's proposal is based on wishful thinking, not factual analysis. Its suggestion that updates can occur in "real time" ignores the fact that there is frequently a lag between the submission of the updated location by the customer and its entry into the database due to manual validation.³⁰ Verizon, for example, notes that customers may not always know the correct MSAG address for their destination until they arrive.³¹ Thus customers using a nomadic VoIP service don't "expect" service to be working when they arrive at their destination but only after the VoIP provider can process the location update. Similarly, NASUCA found that the expectation of "an immediate update" of registered location information is "too strict."³² Instead, where consultation of the customer is required, such as in the event of address conflicts in the MSAG, five days is a reasonable interval.³³ An arbitrary, unrealistic

²⁸ See Comments of United Online, Inc., at 12-14. Of course, imposing the requirement of MSAG-validated data is not mandated by the *Order*.

²⁹ See Comments of Boulder Regional Emergency Telephone Service Authority, at 6.

³⁰ See *id.*

³¹ See Verizon Comments, at 4-5.

³² See, e.g., Comments of National Association of State Utility Consumer Advocates, at 16.

³³ See Comments of RNK, Inc., D/B/A RNK Telecom, at 10-11.

deadline might prevent VoIP providers from completing the address validation needed to ensure dispatch of emergency response to the correct location. It is better to be accurate than quick.

Instead of regulation, the Commission should allow market forces to develop and provide the customers the ability to update registered location information as fast as possible.³⁴ USTA notes that not all customers of VoIP service have the same needs. In other words, while the small or medium sized business customer does not need the ability to update the registered location in 24 hours or less a residential consumer might value that service. The market place should be allowed to function so that different providers seek to differentiate their service to different customers based on features that those customers value for which they are willing to pay. The government should not mandate a one size fits all form of VoIP service.³⁵

Nor should the Commission jump the gun and regulate “prematurely.”³⁶ VoIP providers and their technology vendors need time and market experience to assess what technological arrangements work best for such updates and the Commission should afford providers the flexibility needed to arrive at such conclusions.

If the Commission nonetheless imposes standards on VoIP providers, as proposed in some comments, United Online again emphasizes that such requirements should only apply to those providers that own their own E9-1-1 facilities.³⁷ Companies that lack control over the broadband networks, trunks, switches, or other facilities used in the provision of their VoIP services, rely on the services of vendors that own and control such facilities. These vendors have

³⁴ See Comments of United States Telecom Association, at 7.

³⁵ See BellSouth Comments, at 7-8.

³⁶ See Comments of SBC Communications Inc., at 10-11.

³⁷ See Comments of United Online, Inc., at 13

the ability to control compliance with performance standards that the provider does not, including performance in updating registered location information and processing database updates. Providers such as United Online that rely on third party vendors are at the mercy of those vendors.

It thus follows that to the extent the Commission imposes performance standards they should be imposed on the vendors that work with VoIP providers to provide an E9-1-1 service. As discussed in United Online's initial comments, some vendors currently refuse to enter into contractual arrangements that would require them to comply with certain aspects of the *Order*, suggesting that direct regulation by the Commission through performance standards is preferable to regulation of service providers that lack the capacity to control compliance.

VII. THERE IS LITTLE SUPPORT IN THE COMMENTS FOR REQUIRING THAT VOIP PROVIDERS MAINTAIN SELECTIVE ROUTER REDUNDANCY

At least one party, the Washington State Enhanced 911 Program, suggests that redundancy to the selective router should be standard and that it is a "Network Best Practice." Virtually every other party that comments on this aspect of the Notice disagrees with the Washington comments. As United Online indicated in its initial comments, imposing a redundancy requirement on VoIP providers would have an enormous economic impact on providers and in many instances cripple the ability of providers to offer service, including 9-1-1 service, because of financial constraints.³⁸ In light of the burden of a redundancy requirement, those parties that addressed this issue in their comments express a strong preference that redundancy, to the extent

³⁸ See Comments of United Online, Inc., at 15-16.

it is necessary, should be the responsibility of the individual PSAP, particularly since there is no similar requirement for wireline or CMRS providers.³⁹

VIII. ILECS SHOULD BE OBLIGATED TO DIRECTLY PROVIDE ALL OF THE ELEMENTS OF THE WIRELINE E9-1-1 NETWORK TO VOIP PROVIDERS ON JUST, REASONABLE AND NONDISCRIMINATORY TERMS AND CONDITIONS

In order for VoIP providers to offer the E9-1-1 service mandated by the Commission, providers need access to the wireline E9-1-1 network. As the *Order* recognizes, that wireline E9-1-1 network, as a legacy of the ILECs' historical, state sanctioned monopoly, remains under the ownership and control of the ILECs.⁴⁰ It is thus reasonable that the Commission impose upon ILECs a specific obligation to provide access to that network, including the individual components of that network, to VoIP providers on terms consistent with the core mandates of the Communications Act. In other words, the Commission should place upon the ILECs a clear and enforceable obligation to provide such access on just, reasonable and nondiscriminatory terms and conditions. United Online recognizes that some ILECs have made progress on affording large VoIP providers access to that Wireline E9-1-1 network. Without a clear legal and enforceable obligation, however, it is not clear that the commercial arrangements touted by SBC and USTA in their comments will be available to smaller VoIP providers that lack the resources to engage in protracted negotiations with ILECs who maintain their exclusive control over the Wireline E9-1-1 Network that all interconnected VoIP providers need to provide Commission

³⁹ See Verizon Comments, at 5; Comments of National Cable & Telecommunications Association, at 3. See also Comments of National Association of State Utility Consumer Advocates, at 19.

⁴⁰ See Comments of United States Telecom Association, at 4.

mandated E9-1-1 service. Nor is it clear that every ILEC that operates a selective router anywhere in the country will offer the same terms as SBC.

In imposing this obligation, United Online does not seek to undermine the commercial efforts the RBOCs have made to date and cited repeatedly in their comments.⁴¹ Nor does United Online advocate a “one-size-fits-all regulatory approach.”⁴² There are, of course, other VoIP providers that lack Vonage’s resources, operate in smaller footprints, offer different services that require different approaches to access to the E9-1-1 network, and operate in territories where the ILEC has not moved at the same pace as the RBOCs. All of these factors suggest that the example of RBOC commercial arrangements with Vonage, as touted in SBC’s comments, have limited applicability.⁴³ United Online agrees with Telecommunications Systems, Inc., “what may work for one provider may not work for another, and that the regulations become onerous only when rigid specifications prevent innovation and competition.”⁴⁴

Nor does United Online ask the Commission to declare which technical solutions must be made available. Rather, “[b]y not dictating the technical means by which providers must come into compliance,” the Commission can avoid imposing “undue regulation.”⁴⁵

However, “access to all elements required to interconnect to the PSAPs, including but not limited to: trunks to selective routers, data population of selective routers, interconnection to and

⁴¹ See Comments of SBC Communications Inc., at 16-17 (citing RBOC agreements with Vonage).

⁴² Comments of United States Telecom Association, at 4

⁴³ See Comments of SBC Communications Inc., at 16-17

⁴⁴ Comments of TeleCommunications Systems, Inc., at 5.

⁴⁵ *Order*, Separate Statement of Chairman Kevin J. Martin at 1.

provision of Automatic Line Identification (ALI) databases, and assignment of pANIs” is not “undue regulation.”⁴⁶

IX. COMMENTS CONFIRM THAT IT IS PREMATURE FOR THE COMMISSION TO IMPOSE SPECIFIC AUTOMATIC LOCATION REQUIREMENTS FOR VOIP

While most commentators seemed to agree that it is premature for the FCC to impose specific standards and deadlines for ALI requirements at this time, some parties asserted that the time was right for the FCC to do so.⁴⁷ United Online again urges the Commission to refrain from imposing burdensome regulation on the development of new location technology. The agency should not interfere with the development of market-based solutions to this current technology hurdle. Instead, the Commission can encourage the industry, in conjunction with public safety organizations, to develop IP-based E9-1-1 solutions that capture the advantages of an IP-enabled network. Commission intervention is only necessary where the market fails. It is too early to tell whether the burgeoning market for VoIP service and related technology will produce a technically and economically viable solution that consumers desire. United Online agrees with parties that suggest that “the long-term public interest is better served by allowing the market sufficient time to develop various appropriate technological solutions and rationally assess the merits of

⁴⁶ See Comments of TeleCommunications Systems, Inc., at 5 (urging Commission to mandate industry cooperation and access to all elements of the wireline E9-1-1 network); *see also* Comments of Global IP Alliance and Professor Henning Schulzrinne, at 2 (“Access to essential databases needed for routing emergency calls should be available on a nondiscriminatory basis to all legitimate users, at non discriminatory terms and pricing. Access to such essential databases must not be used to delay entry of VoIP competitors to traditional voice service providers.”)

⁴⁷ See *e.g.*, Comments of Boulder Regional Emergency Telephone Service Authority, at 4; Comments of National Association of State Utility Consumer Advocates, at 13-14; Comments of Washington State Enhanced 911 Program, at 1-2, Comments of APCO, at 2.

each technology.”⁴⁸ Until the market has a chance to work, the Commission should not impose “undue regulation.”

Some parties that urge the Commission to adopt a VoIP location standard suggest that it is the Commission’s role to implement a “one size fits all” approach, with the agency mandating specific technological solutions rather than encouraging the industry and public safety officials to develop solutions that consumers desire.⁴⁹ Washington State, for example, suggests that the Commission require “a common location signaling platform” for wireless VoIP services.⁵⁰ Washington’s comment urges the Commission to compel industry adoption of a standard solution.⁵¹ While a uniform standard would be ideal, and should be encouraged, that standard should emanate from the industry and engineers not from regulators.⁵² Allowing industry to experiment with different technologies will allow industry participants to determine what the specific needs of the market are and tailor engineering solutions to meet the needs of the market.⁵³ Other approaches risk having a top-down solution imposed by government stifle industry innovation and, more importantly, stifle consumer adoption of VoIP services due to costly regulatory requirements that consumers do not want. In other words, the Commission should avoid

⁴⁸ Comments of Information Technology Industry Council, at 7.

⁴⁹ *See, e.g.*, Comments of NENA, at 6 (any agency involvement should “allow the appropriate standards processes to determine the specific methodologies.”).

⁵⁰ *See* Comments of Washington State Enhanced 911 Program, at 1.

⁵¹ *See id.* at p. 2.

⁵² *See* Comments of NENA, at 6 (setting and evaluating standards “is most appropriately accomplished through nationally recognized standards processes.”).

⁵³ *See* BellSouth Comments, at 6. (“Competition will drive the industry participants to adopt solutions that meet market needs and differentiate a VoIP Provider from its competitors.”). *See also* Comments of Information Technology Industry Council, at 6 (“the most appropriate technical solution is likely to depend upon the type of nomadic VoIP service being offered”).

“[a]rbitrary requirements that are not based on technological capabilities now being addressed in standards development processes.”⁵⁴

Other parties advocate a technologically neutral approach that nonetheless would unduly regulate VoIP services. NASUCA, for instance, while urging the Commission to adopt a “technologically neutral” standard, asks the agency to have that standard take effect on June 1, 2006.⁵⁵ United Online’s initial comments emphasized that such a short deadline is impracticable.⁵⁶ The solutions discussed in the *Notice* are merely proposals and all have their shortcomings.⁵⁷ United Online has serious concerns that a June 1, 2006 deadline is unreasonable. As Cisco Systems observes, that deadline is “inflexible and unrealistic.”⁵⁸ United Online agrees. Adoption of this deadline would “hinder rather than hasten the development of appropriate solutions. There is simply no way that, in less than 10 months, companies can answer the fundamental technical questions that remain.”⁵⁹ Most providers would be unable to comply and the Commission would have to engage in a wasteful exercise of continually extending the deadline, as it has with the Phase II requirements of Wireless E9-1-1.⁶⁰ Further, such a deadline would “force service

⁵⁴ Comments of NENA, at 6.

⁵⁵ APCO also urges the Commission to adopt this deadline, but acknowledges that it “has no independent expertise on those technical questions.” Comments of APCO, at 2.

⁵⁶ Comments of United Online, Inc., at 9-10.

⁵⁷ See, e.g., Comments of NENA, at 9 (arguing that “geodetic” solutions are “unacceptable”).

⁵⁸ Comments of Cisco Systems, Inc., at 10.

⁵⁹ *Id.*.

⁶⁰ See generally *Joint Petition for Suspension or Waiver of the Location-Capable Handset Penetration Deadline*, Joint Petition for Suspension or Waiver of the Location-Capable Handset Penetration Deadline, CC Docket No. 94-102 (filed June 30, 2005) (“CTIA Waiver Petition”); see also Comments of CTIA – The Wireless Association, at 7; Comments of Earthlink, Inc., at 4.

providers to wed themselves to particular approaches before rationally assessing the pros and cons of each approach.”⁶¹

The Boulder Regional Emergency Telephone Service Authority’s separate proposal to require VoIP providers to comply with the wireless E9-1-1 location standard would constitute a fundamental error if adopted.⁶² First, even the wireless industry has not met those requirements.⁶³ It is inconceivable that the agency could justify a decision to adopt for VoIP, a standard that experience had conclusively demonstrated as a failure in the wireless context. Second, and as discussed above, and in United Online’s initial comments, there are currently only proposals, but no solutions to the automatic location hurdle.⁶⁴ It would be irresponsible for the Commission to impose the tremendous burden of complying with a technical standard when there is no evidence that there is a workable solution available in the market making compliance possible.⁶⁵

X. CONCLUSION

United Online recommends that the Commission resist expanding scope of the *Order* to services that consumers cannot reasonably expect to be 9-1-1 capable. Consumers of United Online’s computer-launched software application would not reasonably expect such capability. Further, the Commission should adopt national VoIP E9-1-1 standards, and allow for states and localities to implement such standards. The Commission should reject additional reporting

⁶¹ Comments of Cisco Systems, Inc., at 10.

⁶² See Comments of Boulder Regional Emergency Telephone Service Authority, at 4-5.

⁶³ See generally *CTIA Waiver Petition*.

⁶⁴ See e.g. Comments of Cisco Systems, Inc., at 10.

⁶⁵ See Comments of Information Technology Industry Council, at 6. (“no single technology or mix of technologies may ever be 100% effective at providing precise location information for some kinds of devices.”)

requirements for VoIP providers, as there are much more effective means to monitor the industry's progress in developing automatic location technology for VoIP services. The Commission also should not adopt timeframes for when location information should be updated, as this function is generally outside the control of VoIP providers. Additionally, the Commission should require ILECs to allow access to E9-1-1 infrastructure, as this will prevent frustration of the Commission's policy goals in the adoption of VoIP E9-1-1 services.

Respectfully submitted,

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